

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF
DELAWARE, IN AND FOR NEW CASTLE COUNTY**

COURT NO. 13

WILLIAM PETTITT

§

Plaintiff Below,

§

Appellant

§

§

VS

§

C.A. No. JP13-18-010037

§

SHAWN MITCHELL

§

LATISHA JACKSON

§

Defendant Below,

§

Appellee

§

APPEARANCES:

Plaintiff self-represented.

Defendants self-represented.

Sean McCormick, Deputy Chief Magistrate

Peter Burcat, Justice of the Peace

Marie E. Page, Justice of the Peace

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF
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COURT NO. 13

CIVIL ACTION NO: JP13-18-010037

WILLIAM PETTITT

VS

SHAWN MITCHELL & LATISHA JACKSON

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

The Plaintiff, landlord William Pettitt (Pettitt), self-represented, filed Civil Action No. JP13-18-010037, on August 8, 2018, in Justice of the Peace Court 13. Pettitt sought delinquent rent payments of \$1200.00 and possession of the rental unit from the Defendants, tenants Shawn Mitchell and Latisha Jackson (Mitchell & Jackson). Mitchell and Jackson filed a counterclaim on September 11, 2018 for \$800.00, stating that Pettitt prevented them from moving into the rental unit when the lease began. However, possession was no longer an issue at the time of the trial below, as Mitchell and Jackson vacated on September 13, 2018.

The trial, before a single Justice of the Peace, resulted in a Court order issued on October 19, 2018, in favor of Pettitt and against Mitchell and Jackson in the Case in Chief and for Mitchell and Jackson and against Pettitt in the Counterclaim for a net judgment in the amount of \$960.00 for Pettitt. Pettitt filed an appeal for a trial de novo (TDN) on October 23, 2018.

A TDN was scheduled for November 16, 2018, before a three-judge panel, consisting of Justice of the Peace Peter Burcat, Deputy Chief Magistrate Sean McCormick, and Justice of the Peace Marie E. Page. Pettitt appeared, self-represented. Mitchell and Jackson appeared, self-represented.

Facts

A lease between the parties was signed on April 5, 2018 for the rental property of 232 Cobble Creek Curve, Newark, Delaware 19702. Pettitt presented a post-dated check to the bank from Mitchell and Jackson for the security deposit and first month's rent, but since it did not

clear, the bank returned the check to Pettitt. The check was made good on April 20th. Mitchell and Jackson stated that Pettitt told them not to move in until the check was made good, so they did not move in until April 25th, correlating to the Counterclaim amount of \$800.00 for rent abatement.

Mitchell and Jackson were in possession of the keys to the rental unit and had a few items physically in the unit after signing the lease. They also had the electricity for the unit turned on in their names on April 10th, five (5) days after signing the lease. They stated that they believed they could not move in until Pettitt told them it was OK to do so and because they needed to do extensive cleaning.

Discussion

As to the Case in Chief

Landlord-Tenant relationships are governed by Delaware's Landlord-Tenant Code, found in Title 25, Chapters 51 through 70. A landlord seeking possession of the rental unit may file under §5702. If the reason is for failure to pay rent, a landlord may file under 25 Del.C. § 5702(2): *The tenant has wrongfully failed to pay the agreed rent.*

Therefore, the landlord may proceed under 25 Del. C. §5502(a):

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

Even though possession of the rental unit at 232 Cobble Creek Curve is no longer an issue at the time of trial, Pettitt must still satisfy his burden of proof beyond a preponderance of the evidence that Mitchell and Jackson were delinquent in rent payments. Pettitt presented no documentation to the court for consideration: no lease, no delinquency notice, no proof of mailing and no ledger for the unit. Pettitt testified that rent was due for July, August and thirteen (13) days of September, but did not testify as to the amount of the monthly rent or to the total amount of his claim. The Court did not know what the monthly rent was until Mitchell testified that it was \$1200.00 per month.

Therefore, Pettitt did not satisfy his burden of proof beyond a preponderance of the evidence that Mitchell and Jackson owe any rent. The Court finds in favor of Mitchell and Jackson in the Case in Chief.

As to the Counterclaim

Mitchell and Jackson claim that Pettitt caused the initial problem by immediately presenting their check to the bank after they informed him that the check was post-dated and why it was post-dated. They claim that Pettitt refused them possession of the rental unit until such

time as the first month's rent and security deposit were paid, which occurred on April 20th, fifteen (15) days after the lease was signed. However, their claim for \$800 is based on not acquiring possession until April 25th.

Mitchell and Jackson agree that they had the keys and they had a few possessions (a quilt and cleaning supplies) in the unit. They agree that they had the electricity turned on in their names by April 10th. They also admit that, for the benefit of their son, they informed Probation and Parole that 232 Cobble Creek Curve was his address as of the beginning of April.

The Court finds that Mitchell and Jackson were not excluded by Pettitt from the unit. They could have moved in on any day after signing the lease on April 5th. Therefore, the Court finds that Mitchell and Jackson did not satisfy their burden of proof beyond a preponderance of the evidence that Pettitt excluded them from the unit. The Court finds in favor of Pettitt in the Counterclaim.

Conclusion

For the foregoing reasons, the Court finds for Mitchell and Jackson and against Pettitt in the Case in Chief, and for Pettitt and against Mitchell and Jackson in the Counterclaim. The Court awards no money to either party.

Note: Mitchell and Jackson raised the issue of the disposition of the security deposit. The Court finds that the issue was not ripe for consideration at the time of the trial de novo.

IT IS SO ORDERED this 21st day of November, 2018.



Sean McCormick, Deputy Chief Magistrate
For the Three-Judge Panel